

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 96-0565

Withholding Tax

Fiscal Year Ending June 25, 1996

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ISSUE(S)

I. **Withholding Tax** – Liability of Employer

Authority: IC 6-3-4-8; 45 IAC 3.1-1-97; IF#86

Taxpayer protests the tax assessed.

II. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

III. **Tax Administration** – Interest

Authority: IC 6-8.1-10-1

Taxpayer protests the imposition of interest.

STATEMENT OF FACTS

Taxpayer is a subcontractor doing improvements to realty in Indianapolis, Indiana. The company was contracted to provide labor and/or materials for a lump sum. For purposes of the audit investigation, it was assumed that the company provided labor only and that all moneys received were subject to adjusted gross income tax withholding. The company was not registered with the Secretary of State nor was it registered with the Department of Revenue as a withholding agent. The period under investigation was May 25, 1995 through June 26, 1996.

The investigation was completed on August 23, 1996. Taxpayer, in a letter dated October 17, 1996 states it is trying to resolve the matter by determining the correct amount of tax that should have been paid. On October 23, 1996 it remitted a check in the amount of \$10,399.00, which the taxpayer believes to be the correct amount of tax due. On October 30, 1996, a power of attorney was requested and received with a letter stating information would be furnished from which the department will be able to determine the total amount of wages paid on the project in question.

On March 27, 1997, the file was returned to the auditor for resolution. The auditor contacted the taxpayer for additional information on April 1, 1997 by telephone and by letter dated May 9, 1997. On June 4, 1997 the file was returned to the Legal Division unresolved with notation that the POA has not contacted the auditor.

On September 1, 1998 the hearing officer wrote taxpayer's representative and asked for additional information in order to resolve the investigation. On September 17, 1998, the day the POA's letter was returned to the department by the post office, a copy of the letter was faxed to the president of the corporation with a follow up letter dated October 26, 1998. The letter dated September 1, 1998 was again faxed on October 30, 1998 as requested by the taxpayer.

No further information has been provided, therefore the department makes its decision based upon information contained in the investigation report.

ISSUE

I. Withholding Tax – Liability of Employer

DISCUSSION

Taxpayer failed to withhold adjusted gross income tax and county adjusted gross income tax from employees wages, and failed to register with the department. It has acknowledged its error and has sent the department a check in the amount of \$10,399.00, which it represents the amount to be due on a construction project in Indiana with a payroll of \$253,633.00. The Department, however, assessed tax based on the total contract price of \$897,319.40 or a total tax due of \$36,790.10. Taxpayer was advised on numerous occasions to provide detail on their objections of the investigation results.

Information Bulletin #86 states that

If the independent contractor hires employees, the independent contractor is an employer and is required to withhold Indiana adjusted gross income tax from the employees wages and remit them to the Department of Revenue.

45 IAC 3.1-1-97 continues the position stated in Departmental Information Bulletin #86. This section states:

Employers who make payments of wages subject to the Adjusted Gross Income Tax Act and who are required to withhold Federal taxes pursuant to the Internal

Revenue Code (USC Title 26) is required to withhold from employees' wages Adjusted Gross and County Adjusted Gross Income Tax.

Taxpayer is correct in asserting that the withholding tax assessment should be calculated based on wages paid to employees rather than on the entire contract price (wages, materials, etc.). However, the taxpayer has the burden of showing the Department's assessment to be wrong. Taxpayer has not provided records therefore the original assessment stands.

FINDING

Taxpayer's protest is denied.

ISSUE

II. Tax Administration – Penalty

Taxpayer protests the imposition of penalty.

DISCUSSION

Taxpayer protests the imposition of the negligence penalty and has not provided support or reasonable cause for failing to register and pay withholding tax.

FINDING

Taxpayer's protest is denied.

ISSUE

III. Tax Administration – Interest

Taxpayer protests the imposition of interest.

DISCUSSION

Interest, under IC 6.8-1-10-1 may not be waived.

FINDINGS

Taxpayer's protest is denied. The department has no authority to waive interest.

CONCLUSION

Taxpayer's protest is denied for all three issues.